

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.
--

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

PHILIP C. H. PENG,

Plaintiff and Appellant,

v.

CITY OF MONTEBELLO,

Defendant and Respondent.

B176538

(Los Angeles County
Super. Ct. No. BC295174)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Alan G. Buckner, Judge. Affirmed.

Philip C. H. Peng, in pro. per., for Plaintiff and Appellant.

Leibert Cassidy Whitmore and Debra L. Bray for Defendant and Respondent.

Appellant, Philip C. H. Peng appeals from a judgment entered in favor of the City of Montebello after its May 26, 2004 motion for summary judgment was granted. In this case, neither the original complaint, respondent's motion for summary judgment, appellant's reply thereto it, nor any ruling thereon has been included in the record on appeal. As far as the record shows, appellant did not even file written opposition to

defendant's motions for summary judgment. Moreover, we have not been furnished with a reporter's transcript of any of the relevant proceedings in the trial court. Nor has plaintiff provided us with a clerk's transcript or other record from the trial court.

It is well-settled that, as the Court of Appeal explained in *Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712, "The plaintiff must affirmatively show error by an adequate record. [Citations.] Error is never presumed. It is incumbent on the plaintiff to make it affirmatively appear that error was committed by the trial court. [Citations.] Points not urged in the trial court may not be urged for the first time on appeal. [Citations.] This is a general rule of appellate review. [Citation.] 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent. . . .' (Orig. italics.) (See 6 Witkin, Cal. Procedure (2d ed. 1971) Appeal, § 235, p. 4225.)" (Accord, *Maria P. v. Riles* (1987) 43 Cal. 3d 1281, 1295-1296; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575 ["a party challenging a judgment has the burden of showing reversible error by an adequate record"]; *In re Kathy P.* (1979) 25 Cal.3d 91, 102 ["appellant . . . has not met her burden of showing error by an adequate record"]; *Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003 & fn. 2 [insufficient record to analyze contentions].) We are not permitted to speculate as to the contents of the missing portions of the record or the issues plaintiff may have raised below. (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1055; *Rossiter v. Benoit*, *supra*, 88 Cal.App.3d at p. 712.)

It was plaintiff's burden to affirmatively show error. He has not met his burden. The judgment is presumed correct. Accordingly, it must be affirmed. (*Maria P. v. Riles*, *supra*, 43 Cal.3d at pp. 1295-1296; *In re Kathy P.*, *supra*, 25 Cal.3d at p. 102; *Ballard v. Uribe*, *supra*, 41 Cal.3d at pp. 574- 575; *Pringle v. La Chapelle*, *supra*, 73 Cal.App.4th at p. 1003 & fn. 2; *Rossiter v. Benoit*, *supra*, 88 Cal.App.3d at p. 712.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COOPER, P.J.

We concur:

RUBIN, J.

BOLAND, J.